

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN CONTRERAS,

Defendant and Appellant.

D044202

(Super. Ct. Nos. SCD175364,  
SCN146026, SCN146268)

APPEAL from a judgment of the Superior Court of San Diego County, Melinda J. Lasater and William D. Mudd, Judges. Affirmed in part and reversed and remanded in part.

In superior court case number SCN146026, Ruben Contreras entered a negotiated guilty plea to causing serious bodily injury while driving to evade an officer. (Veh. Code, § 2800.3.) In case No. SCN146268, he entered a negotiated guilty plea to taking or knowingly driving a stolen vehicle. (Veh. Code, § 10851.) In both cases, the court suspended imposition of sentence and placed Contreras on three years' probation

including a condition he serve 365 days in custody. On July 23, 2003, the People charged Contreras with a number of crimes in case No. SCD175364. On September 5, Contreras entered negotiated guilty pleas to stalking (Pen. Code, § 646.9, subd. (a)),<sup>1</sup> and receiving stolen property (§ 496, subd. (a)). He admitted personal use of a firearm during the stalking (§ 12022.5, subd. (a)). The court revoked probation in case No. SCN146026 and case No. SCN146268, and sentenced Contreras in case No. SCD175364 to prison for nine years four months: double the two-year middle term for stalking with a strike prior enhanced by the four-year middle term for personal firearm use, with a consecutive one year four months for receiving stolen property with a strike prior (double the eight-month middle term). It imposed concurrent terms on the evading arrest and taking or driving a stolen vehicle conviction. It awarded 289 days of credit in case No. SCD175364: 252 actual days and 37 days under section 2933.1, 530 days of credit in case No. SCN146026: 461 actual days and 69 days under section 2933.1, and 411 days of credit in case No. SCN146268: 358 actual days and 53 days under section 2933.1.

## DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible but not arguable issues: (1) whether the trial court erred in awarding only 15 percent conduct credit on the

---

<sup>1</sup> All further statutory references are to the Penal Code.

sentences for receiving stolen property, evading an officer, and taking or driving a stolen vehicle.<sup>2</sup>

We granted Contreras permission to file a brief on his own behalf. He has responded with a letter that is in Spanish and has been translated into English. We treat the letter as a brief. Contreras contends the trial court erred in imposing a nine-year-four month sentence because the sentence agreed to in the plea bargain was seven years, he was not guilty of receiving stolen property, he was not advised he would have a suspended prison sentence when he was placed on probation, and he was denied effective assistance of trial counsel.

### *The Plea Bargain*

Contreras is mistaken in contending the plea bargain provided for a seven-year sentence. The plea bargain form states the sentence is up to the court but that the maximum term is 17 years four months. When the court orally accepted Contreras's guilty pleas in case No. SCD175364, it twice told him that the sentence would be up to the court and that the maximum term was 17 years four months.

### *Receiving Stolen Property*

Having entered a guilty plea to receiving stolen property, Contreras cannot challenge the facts underlying the conviction. (§ 1237.5; *People v. Martin*, *supra*, 9 Cal.3d at p. 93.)

---

<sup>2</sup> Because Contreras entered guilty pleas, he cannot challenge the facts underlying the convictions. (§ 1237.5; *People v. Martin* (1973) 9 Cal.3d 687, 693.) We need not recite the facts.

### *Suspended Sentence When Placed on Probation*

Contreras is mistaken when he contends he was not advised when placed on probation that his sentence would be suspended for three years. At the initial sentencing hearing in October 2002 on the convictions of taking or driving a stolen vehicle and evading an officer, when the court placed Contreras on probation it specifically told him it was suspending imposition of sentence for three years.

### *Effective Assistance of Trial Counsel*

The record sheds no light on this issue. "If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation. [Citation.] Otherwise, the claim is more appropriately raised in a petition for writ of habeas corpus. [Citation.]" (*People v. Carter* (2003) 30 Cal.4th 1166, 1211, citing *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

While reviewing the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, we requested supplemental briefing on the issue of whether Contreras admitted the strike prior used to impose the nine year four month sentence. The People concede that the trial court erred in basing the sentence on a strike prior when the court did not ask Contreras whether he admitted an alleged strike prior. (See *People v. Sturdy* (1965) 235 Cal.App.2d 306, 311.) We remand for determination whether Contreras has a strike prior and for resentencing if not. The review of the record has disclosed no other reasonably arguable appellate issue.

## DISPOSITION

The convictions are affirmed. The sentence is reversed and the matter is remanded for determination whether Contreras has a strike prior and resentencing.

---

HUFFMAN, J.

WE CONCUR:

---

McCONNELL, P. J.

---

AARON, J.